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The Solicitors' Journal

VOL. LXXVIII. **Saturday, November 3, 1934.** No. 44

Current Topics: Impossibility of Performance — Pedestrian Crossing Regulations—A New Highway Code—End of the Session—Bank's Charges as Custodian Trustee—The Circumstances of the Case — Nature of Fraudulent Preference—Equality of Punishment — Tithe — Fraudulent Bankrupts 773
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Current Topics.

Impossibility of Performance.

THE late Professor TAIT, the distinguished holder of the chair of natural philosophy at Edinburgh University, on one occasion declared on scientific grounds that a golf ball could not be propelled more than a certain number of yards, which he mentioned. Immediately afterwards his son FREDDY TAIT, the golfer, exposed the fallacy of his father's assertion by driving his ball considerably further than the length which was said to be its utmost possible limit. The moral from the story is obvious: be extremely cautious as to possibilities. In a letter to *The Times* last week, written over the initials "F.D.M.," which we imagine will scarcely conceal the identity of Mr. Justice MACKINNON, is brought out afresh the unwisdom of endeavouring to define what in law is in the sphere of the impossible. The learned writer points out that BRACTON, who wrote in the thirteenth century, cited a promise made either at Oxford or at Exeter to do something the same day at London as being so obviously impossible as to be void in law. A later writer gave as his example of a promise having the same consequence, "to go to Rome in one day"; another instanced as manifestly impossible, "if a man agrees to make a flying machine that will get across the Atlantic in two hours"; while Sir WILLIAM ANSON, writing nearer our own day, offers as an example of the impossible "to go round the world in a week, or to supply a live pterodactyl." In view of the latest success in aviation, the learned correspondent suggests the wisdom of editors of text-books in the future being more chary in drawing illustrations from the subject of travel in seeking to illustrate the doctrine of impossibility of performance (although, as he says, they may retain the example of supplying "a live pterodactyl"), seeing that they are so likely to be falsified by fresh achievements in annihilating space. Sir THOMAS BROWNE, who had a perfect genius for exquisite phrases, speaks somewhere of "time which antiquates antiquities and hath an art to make dust of all things", certainly time antiquates notions as well as material things, and with each advance of science will give fresh examples of its power to do this.

Pedestrian Crossing Regulations.

LAST Tuesday saw the coming into operation of the London Traffic (Pedestrian Crossing Places) (No. 2) Provisional Regulations, 1934, which have been made by the Minister of Transport after consultation with the London and Home Counties Traffic Advisory Committee and apply exclusively to the Metropolitan area. The new rules have received such detailed treatment in the general press that it is unnecessary to deal with them here, but the principal features, including the interesting distinction between the respective rights of pedestrians and drivers at controlled and uncontrolled crossings, may be briefly noted. At the latter, controlled by a police constable or signals, road-users and pedestrians are required to obey the signals, subject to a prohibition against a driver proceeding, notwithstanding a signal to do so, until a foot-passenger who has started to cross is clear of the vehicle. At uncontrolled crossings the pedestrian has precedence. A driver approaching a crossing must proceed at such a speed as will enable him to stop, "unless he can see that there is no foot-passenger thereon." There are general prohibitions against drivers and walkers obstructing crossings, and the latters' right to cross the road is not restricted to the places provided. Breach of the regulations constitutes an offence, punishable on summary conviction by a fine not exceeding 40s.

A New Highway Code.

AT the first meeting of the Committee on Road Safety held at the Ministry of Transport on 26th October last, Mr. HORE-BELISHA alluded to the urgent need of a revision of the existing Highway Code, and said that he hoped to present a new code to Parliament before Christmas. Traffic light signals, pedestrian crossings, silent zones, priority of roads, with the possibility of an obligatory stop instead of slowing before entering a more important thoroughfare, have introduced many questions needing fresh consideration in relation to road safety since the issue of the present code in 1931. In the course of his remarks the Minister of Transport said that one of the chief obstacles in the way of successful dealing with road accidents had been the number of contending voices and the sensitiveness of each particular interest lest it should lose ground to the claims of another. He deprecated the tendency to regard every measure as a triumph for some particular class of road user and the defeat of some other, and expressed the hope that the committee would reconcile differences of view so that they could speak to the public with one voice. The Minister alluded to the arrangement with the Home Secretary—already noted in these columns—whereby accidents attributable to road defects shall be reported by the chief constables to the divisional road engineers, and stated that he proposed to have an analysis made for 1935, similar to that for 1933, showing in groups the figures and causes of all fatal accidents and the conditions in which they occurred, so that the results of the recent measures taken to secure the safety of the public may be learnt.

End of the Session.

THE principal matters before Parliament on its resumption of business after adjournment for the summer vacation last Tuesday were the Incitement to Disaffection Bill, the Betting

and Lotteries Bill and the Electricity (Supply) Bill. Three important motions, which the Prime Minister announced would be taken on Thursday, were in prospect—one to permit of simultaneous publication in India and in this country of the report of the India Joint Select Committee, another for the presentation of an Address to the Crown asking that the vacancies in the King's Bench Division caused by the retirement of ACTON, J., and the appointment of ROCHE, J., to be a Lord Justice of Appeal, may be filled without delay, and a third proposing that the Standing Committee which is considering the Betting and Lotteries Bill shall suspend its work, and that the rest of the Committee stage shall be transacted on the floor of the House of Commons. It appears that the Government is determined to secure the passage of the whole Bill, which had already passed through the House of Lords, or to drop it altogether. The Electricity (Supply) Bill, which has also passed through the House of Lords, is designed to meet certain incidental difficulties in the administration of the Act of 1926, and a petition has been presented by fifty-seven authorised electricity undertakings asking that the measure should be examined by a Select Committee instead of the usual Standing Committee. A day is to be set apart for the consideration of the reports rendered by the four Commissioners sent to the distressed areas. A White Paper containing the reports will be issued at an early date. A day will be given shortly for a debate on the private manufacture of armaments.

Bank's Charges as Custodian Trustee.

THE varied nature of the services rendered by the modern banking system was well illustrated in the recent case of *Forster and Another* v. *Williams Deacon's Bank Ltd.* (78 SOL. J. 754), when Mr. Justice BENNETT decided that a bank could be appointed to be both managing trustee and custodian trustee under the Public Trustee Act, 1906. The action was brought by two beneficiaries under a will made in 1879 of a man who died in 1880. There was no power in the will for any trustee to charge remuneration for his services as trustee. On 31st May, 1932, the sole trustee of the will, and son of the testator, desired to be relieved of his trusteeship, and he and the defendants became parties to a deed of appointment whereby the defendants were appointed trustees. The deed appointed the defendants to be (*a*) sole managing trustee and (*b*) custodian trustee in place of the present trustee, and provided that the bank should be treated not only as a managing trustee, but also separately as custodian trustee, with such functions, duties and powers as appertain to a custodian trustee under s. 4 of the Public Trustee Act, 1906. It further provided that, while acting as custodian trustee of the said will, the bank should be entitled to receive by way of remuneration for its services as such trustee out of the property, subject to the trusts of the will, such fees as would for the time being be chargeable by the Public Trustee if he were custodian trustee of the will. The plaintiffs contended that there was no power to appoint a single trustee as custodian trustee, as the deed of 31st May, 1932, appointed a single trustee only, and on the proper construction of the Public Trustee Act, 1906, there had to be another person or persons acting as an ordinary or managing trustee. His lordship referred to s. 1, creating the office of Public Trustee; s. 2, dealing with his general powers and permitting him to act alone if necessary; s. 4, dealing with the relationship between the custodian trustee and the managing trustees; and s. 5, enabling the Public Trustee to be appointed as sole trustee under any will or settlement. Under the Public Trustee Custodian Trustee Rules, (S.R. & O. 1926 (No. 1433)) the defendants were qualified to act as custodian trustee, and it was not a necessary consequence of the language of s. 4 of the Public Trustee Act that there must always be some person or persons associated with the Public Trustee as managing trustee to enable the Public Trustee to act as custodian trustee. As his lordship could find no express prohibition in that section preventing the Public Trustee from holding both offices and as he saw no reason why he should imply into it a prohibition against a banking or insurance company or body corporate, duly qualified to act as custodian trustee, holding both offices, or disentitling them to receive the remuneration which the Public Trustee would be entitled to receive under s. 4 (3), the action was dismissed with costs.

The Circumstances of the Case.

QUASHING sentences of twelve months' hard labour passed on two men for being incorrigible rogues, the Lord Chief Justice observed last Monday that the court below appeared entirely to have ignored its duty under s. 10 of the Vagrancy Act, 1824, of examining into the circumstances of the case. Lord HEWART said that, to judge from this case and many others which had come before the Court of Criminal Appeal, there was an impression abroad that when a man was sent to quarter sessions to be dealt with as an incorrigible rogue the only duty of the court was to pass on him the maximum sentence of twelve months' imprisonment with hard labour. The first duty of the court was to inquire into the circumstances of the case, and the second to consider what was the appropriate sentence. *The Times*' report of the judgment continues, "It really is high time that the practice followed in this case was put an end to. In cases of this kind it is the duty of quarter sessions to examine into the circumstances of the case, and it is not at all a matter of course that, if imprisonment there is to be, it must be imprisonment for the maximum time."

Nature of Fraudulent Preference.

IN *Re Joseph Samson Lyons; ex parte Barclays Bank Ltd.* v. *The Trustee* (78 SOL. J. 754), the bankrupt had a permitted overdraft of £2,000 secured by the guarantee of his father. On 12th September, 1932, the overdraft had been reduced just below that figure and had never afterwards exceeded it. There was evidence that since March of the same year the bankrupt knew that he was insolvent. The petition, receiving order and the adjudication occurred at various dates in October, November and December of the same year. By the end of August he had ceased to pay anything to the general body of his creditors, but paid to the credit of his account at the bank moneys collected from his debtors and reduced the overdraft to about £1,300, which the guarantor duly paid off. CLAUSON, J., held that dominant intention to relieve his father was the fair inference to be drawn from the facts. This was negatived by the Court of Appeal. Lord HANWORTH, M.R., observed that the bankrupt continued to operate the account after 12th September in exactly the same way as he had done before that date, when there was admittedly no intention to prefer anyone. He paid money in and he drew money out. To deduce from that that the only explanation was that the debtor was minded to relieve his father was to misread the evidence and not to look at it in its proper perspective. Reference was made to the essential nature of fraudulent preference indicated in *Peat* v. *Gresham Trust Ltd.* [1934] A.C. 252, by Lord TOMLIN, who said (*ibid.*, p. 262), that the onus was on those who claimed to avoid the transaction to establish what the debtor really intended, and that the real intention was to prefer. The passage goes on to indicate that while that intention might be a matter of inference or direct evidence, where there is not direct evidence, and there is room for more than one explanation, it is not enough to say, there being no direct evidence, the intention to prefer must be inferred.

Equality of Punishment.

A RECENT letter to *The Times* by a magistrate forms an interesting commentary on some remarks made by the Lord Chancellor at the conference of the Magistrates' Association, held at the Guildhall lately. As reported in our last issue,

Lord SANKEY urged the need for some kind of standard, albeit an indefinite one, by which magistrates all over the country could award similar punishment for similar offences, so that the public mind might be less often shocked by glaring discrepancies in the punishment of the offences at different times. The letter brings out the difficulty of securing what may be described as an objective similarity of punishment for like offences. "A fine of £20," it reads, "in the case of a big transport company which pays its drivers' fines is a matter of small moment. A fine of £2, carrying with it loss of employment, as frequently happens, may be a devastating sentence in the case of an employee." If the maxim that the amount of a fine should have due relation to the defendant's ability to pay is to be honoured, how, the writer asks, is uniformity to be attained? The suspension of a licence, amounting in some cases only to personal inconvenience and in another to a harsh sentence, is also alluded to. This, it is submitted, is a less difficult point in view of the overriding consideration of securing the safety of the public, who are entitled to protection as much against the paid driver as against the private motorist. But the letter does bring out the difficulty—and indeed the impossibility—of securing equality of punishment by similarity of penalty. It may perhaps be pointed out with respect that the Lord Chancellor's statement does not suggest that the subjective factor (if we may so term it) can or should be ignored, the "glaring discrepancies" to which he referred being in the punishment of like offences, not the particular penalty imposed.

Tithe.

BRIEF reference may be made to some interesting evidence recently given before the Royal Commission on tithe rent-charge, which has been sitting at Sanctuary-buildings, Westminster, under the presidency of Sir JOHN FISCHER WILLIAMS. Sir CHARLES HOWELL THOMAS, Permanent Secretary of the Ministry of Agriculture, said that according to a speech by Lord JOHN RUSSELL, on behalf of the Government of the day in 1836, the idea was to vary the charge according to the fluctuating power of money. Sometimes when land was sold no reference was made to the fact that tithe charge existed on it, but generally it was the custom to disclose the fact. In most cases railway companies continued to pay tithe on the agricultural land they bought after 1836, but in a good many instances they obtained an altered apportionment. Mr. A. N. C. SHELLEY, of the Rating Department of the Ministry of Health, observed that the rateability of tithe was founded on the well-known Statute of ELIZABETH, but that rate was confined to the relief of the poor. Mr. J. H. MITCHELL, of the Board of Inland Revenue, expressed the opinion that the maximum peak of values have been reached. Rates are not going up and the annual values are not increasing. Therefore, he thought, rating assessments will probably not increase. Mr. J. D. STEED, giving evidence on behalf of the Central and Associated Chambers of Agriculture, suggested that tithes should be converted into a land tax so as to make it a State charge and prevent recurrence of some of the present difficulties of collection. The incumbent would then receive his money from the State. The Commission stands adjourned until 8th November.

Fraudulent Bankrupts.

IT is intimated that the Federation of British Industries has sent a letter to the President of the Board of Trade urging that prosecutions should be ordered more freely than is the case at present where the Official Receiver's report discloses evidence of any offence in connection with the Bankruptcy Act. The length of the suspension of discharge has, it is submitted, little or no effect in protecting traders in view of the fact that it is easy for the bankrupt to carry on business under another name or as manager for a relative. Victimisation of traders will, the Federation thinks, continue to increase unless more drastic action in the form of prosecution is taken.

Distraint on Animals.

AT common law all animals in which there is any right of property and situate on the demised premises could be seized by a landlord under a distress for rent. This right was extended by the Distress for Rent Act, 1737, to cattle and stock of the tenant feeding or depasturing upon any common appendant or appurtenant or in any way belonging to the demised premises. But at the present day there are several important exceptions to this rule, animals being in certain circumstances absolutely privileged from distress, while in other cases the privilege is a qualified one merely, so that distress can be levied only in the absence of sufficient other distrainable property. It is proposed in this article to consider briefly these two categories.

I. ABSOLUTE PRIVILEGE.

(1) *Animals feræ naturæ.*—According to "Coke upon Littleton," 47A, "(Distress) must be of a thing whereof a valuable property is in some body, and therefore dogs, bucks, conies and the like that are *feræ naturæ* cannot be distrained." But, as Willes, L.C.J., said in *Davies* v. *Powell* (1738 Willes, a p. 48), this rule is "plainly too general," for it is clear that animals *feræ naturæ* may be kept in circumstances so as to create a property in them and a definite value. Thus, deer may become valuable property by being kept in a private inclosure (*Davies* v. *Powell, supra*), and the same is true of birds in cages and young pheasants in coops (*R.* v. *Cory* (1864), 10 Cox C.C. 23), and all such animals are, therefore, distrainable. Up until the Larceny Act, 1916, s. 5, dogs were not the subject of larceny, but, nevertheless, the view for a long time has been that they are capable of being distrained (*Bunch* v. *Kennington* (1841), 1 Q.B. 679).

(2) *Straying Cattle.*—Cattle belonging to a stranger may be distrained for rent immediately they stray on to any land parcel of the demised premises, provided that they do so either by the default of their owner or with his consent. But where there has been neglect on behalf of the tenant (e.g., where he is under a legal duty to maintain fences and has allowed them to fall into disrepair, thus enabling the cattle to stray) the cattle may not be distrained until they have been on the land for a day and a night (*levant et couchant*) and until notice of their presence has been given to their owner and he has neglected to remove them (*Poole* v. *Longueville* (1670), 2 Wm. Saund. 288; *Kemper* v. *Crews* (1684), 1 Lord Raym. 167). Presumably, however, even after these conditions have been complied with and the cattle distrained, it would still be open to their owner to avail himself of the protection conferred by the Law of Distress Amendment Act, 1908, upon the goods of third persons, i.e., he could serve on the landlord a written declaration stating that the tenant has no right in the cattle and that they are the property of the declarant, and thus prevent the cattle from being sold pursuant to the distress.

(3) *Sale of Farming Stock.*—By the Sale of Farming Stock Act, 1816, s. 6, distress cannot be levied on "horses, sheep or other cattle, nor on any beasts whatsoever . . ." which are being used for the purposes of threshing out, carrying or consuming any corn, hay, straw, turnips or other produce which, under the provisions of that Act, have been sold by a sheriff in the course of levying execution. The section is expressed in very general terms, and *prima facie* would include even cattle belonging to the tenant.

(4) *Agricultural Holdings Act*, 1923, *s.* 35 (4).—"Live stock which is the property of a person other than the tenant and is on the holding solely for breeding purposes *shall not be distrained for rent.*" Thus runs s. 35 (4) of the Agricultural Holdings Act, 1923, and by s. 57 (1) thereof, "live stock" is defined as including "any animal capable of being distrained." Section 35 replaces s. 29 of the Agricultural Holdings Act, 1908, and it is interesting to note that the protection against distress conferred by the Law of Distress Amendment Act, 1908, upon the goods of "undertenants, lodgers and other

persons," is, by s. 4 thereof, expressly withdrawn from " any live stock to which s. 29 of the Agricultural Holdings Act, 1908, applies." In the net result, therefore, the useful machinery of the Law of Distress Amendment Act, 1908, is not available in the case of such live stock, and the owner thereof is confined to the ordinary remedies for wrongful distress. Disputes as to any matter relating to distress on an agricultural holding may, by the 1923 Act, be determined either by a county court or a court of summary jurisdiction.

II.—Conditional Privilege.

(1) *Cattle, beasts of the plough and sheep.*—Under the Statute 51 Hen. III, stat. 4, " no man shall be distrained by his beasts that gain his land, nor his sheep " in circumstances where there is other sufficient distress to be found. In *Swaffer* v. *Mulcahy* [1934] 1 K.B. 608, it was held that the true meaning of the phrase " bestes ke gaignent sa terre " used in the statute was " beasts of the plough," and it appears from *Keen* v. *Priest* (1859), 4 H. & N. 236, that cart colts, young steers and heifers not used for working the land are not within the statute.

Cattle, beasts of the plough and sheep, therefore, should not be distrained upon unless it is reasonable to suppose that sufficient other distress to satisfy the arrears of rent and costs is not available. In this matter the law does not demand super-human foresight, and in *Jenner* v. *Yolland* (1818), 2 Chit. R. 167, it was held sufficient that the distrainer fairly supposed that it was necessary to distrain such animals and that, if beasts of the plough are legally distrained upon, the auctioneer is not obliged to keep them back until all the unprivileged goods have been sold. And if the only distress present is growing crops, the landlord may distrain on beasts of the plough, being entitled, on the authority of *Piggott* v. *Birtles* (1836), 1 M. & W. 441, to seize that which is immediately available.

Does this conditional exemption extend to cattle, beasts of the plough and sheep owned by an undertenant ? In *Keen* v. *Priest*, *supra*, it was held that it did, and even though the other available distress belongs to the undertenant or to some other person. This decision would appear to be of importance still, since the Law of Distress Amendment Act, 1908, does not extend to *all* undertenants, neither does it apply to live stock within s. 35 of the Agricultural Holdings Act, 1923.

It is worthy of note, in this connection, that in *Hutchins* v. *Chambers* (1758), 1 Burr. 579, Lord Mansfield held that " beasts of the plough " were distrainable for poor rates, although there were sufficient other distress on the premises, saying that the Statute 51 Hen. III, stat. 4, had no application to distress for poor rates, which was really more in the nature of an execution than of a distress proper. And in *McCreagh* v. *Cox and Ford* (1923), 92 L.J.K.B. 855, where the occupier of land failed to pay the poor rate and two of his horses which were being used for getting in the corn were seized and sold, it was held that the exemption of " beasts that gain the land " does not apply to distress for poor rates, so that the distrainee had no right of action. *Hutchins* v. *Chambers* was followed and applied by MacKinnon, J., recently in *Swaffer* v. *Mulcahy*, *supra*, which was a case of distress for arrears of tithe rent-charge. There can be but little doubt that the same principle would be applied in the case of distress for arrears of taxes.

(2) *Agricultural Holdings Act*, 1923, *s.* 35 (1).—Where live stock belonging to a third person has been taken in by the tenant of an agricultural holding " to be fed at a fair price," such stock is not to be distrained " where there is other sufficient distress to be found, and, if so distrained by reason of other sufficient distress not being found, there shall not be recoverable by that distress a sum exceeding the amount of the price agreed to be paid for the feeding, or any part thereof which remains unpaid." Power is given to the owner to redeem his stock on payment to the distrainer of a sum equivalent to the price of feeding (sub-s. (2)) ; but so long as it remains on the premises any portion of the stock continues to be liable to be distrained for the amount for which the whole of the stock is distrainable (sub-s. (3)). " Live stock " includes " any animal capable of being distrained " (s. 57).

The stock must have been taken in to be fed at a " fair price." In *London and Yorkshire Bank* v. *Belton* (1885), 15 Q.B.D. 457, where cows were agisted on the terms " milk for meat," i.e., that the agister was to take the milk in exchange for the pasturage, this was held to constitute a " fair price." On the other hand, it was held in *Masters* v. *Green* (1888), 20 Q.B.D. 807, where cattle were distrained while on a holding pursuant to an agreement whereby the tenant allowed the owner the " exclusive right to feed the grass on the land for four weeks " for £2, that the cattle were not taken in to be fed at a fair price, and were therefore freely distrainable. In the course of his judgment, Field, J., said (at p. 809) : " It appears to me that the tenant does not agree either to ' take in ' or to ' feed ' the cattle, and that the sum which he is to receive is not the ' price ' of the feed of the cattle, but a payment in the nature of rent for use and occupation. The object of the Act, like that of the Lodgers' Goods Protection Act, is to prevent the goods of one man being taken to pay the debt of another, and, so far as its policy is concerned, I see no valid distinction between the cases and no reason why these cattle, just as much as cattle taken on the farm to be agisted, should not be exempt from distress. The duty of the court is, however, to apply the words of the Act, and in my opinion this transaction is not within them."

By the Protection of Animals Act, 1911, s. 7, " any person who impounds or confines . . . any animal in any pound shall, while the animal is so impounded or confined, supply it with a sufficient quantity of wholesome and suitable food and water and, if he fails to do so, he shall be liable upon summary conviction to a fine not exceeding £5.' In *Dargan* v. *Davies* (1877), 2 Q.B.D. 118—decided under a similar section in the Cruelty to Animals Act, 1849—it was held that this provision does not apply to the keeper of the pound.

Solicitor and "Threat" Action.

In a recent action brought under s. 36 of the Patents and Designs Act, 1932, the plaintiffs claimed that a solicitor had, by means of letters, threatened them with an action for infringement of a patent. That section enacts that " Where any person, by circulars, advertisements or otherwise, threatens any person with an action for infringement of patent or other like proceedings, then, whether the person making the threats is or is not entitled to or interested in a patent or an application for a patent, any person aggrieved thereby may bring an action against him, and may obtain a declaration to the effect that such threats are unjustifiable and an injunction against the continuance of such threats and may recover such damages, if any, as he has sustained thereby . . ." Counsel for the plaintiffs agreed that when a solicitor writes a letter in connection with such a matter as the present one naturally assumes that he is doing so on behalf of a client, and that in ordinary circumstances the action would be brought against the client and not the solicitor. But, said counsel, if the solicitor refuses to disclose the name of his client it would be a great hardship to say that the plaintiff is thereby debarred from any cause of action. If that were the case it would enable a solicitor to threaten broadcast and both he and his client would go free and the object of the section be defeated. In the present case the solicitor had not disclosed his client's name, and in those circumstances the very unusual course was taken of suing the solicitor personally. Counsel for the plaintiffs pointed out that the words of the section were " where *any* person," etc., and submitted that that included *any* person who threatened that an action for infringement would be brought. That, he contended, was the plain meaning of the words, but it was made abundantly clear by the words which followed, " whether the person

making the threats is or is not entitled to or interest in a patent or an application for a patent." In his view the letters in question clearly amounted to a threat, and the only question, therefore, was whether the defendant, having regard to the fact that he was a solicitor, was protected. He (counsel) thought that the words of the section were wide enough to include a solicitor; if they did not, then a case might easily arise in which very grave injury would be done.

For the defendant solicitor it was contended, as one would expect, that if the letters written by him to the plaintiffs did amount to a threat, which he denied, then he was acting wholly as a conduit pipe for the passage of communications between his client and the plaintiffs. In the circumstances of the present case it had seemed to him quite unnecessary to give the name of his client which, in any case, could have been obtained by an examination at the Patent Office. There appears to be no authority covering the case where a threat has been made through a solicitor and an action has been brought against him personally, though, of course, there have been a number of cases where the threat having been issued through a solicitor, action has been properly brought against his client. In the present case, counsel for the solicitor submitted, it was the alleged threat that had to be looked at in order to see who in fact was the person on whose behalf the threat was made, and everybody else should be excluded from the operation of the section. He contended that the action was misconceived. Mr. Justice Farwell, before whom the matter came, said that he was not aware that there was anything in s. 36 which especially protected a solicitor more than any other person who chose to offend against it. When one looked at the letters in the present case, however, it was, in his (his lordship's) view, impossible to say that they amounted to a threat by anyone. What they did amount to was a statement by the solicitor that if the plaintiffs did go on doing what they were doing then he was going to advise his client to bring an action for infringement. "It would be open to the client," his lordship concluded, "to refuse to follow the solicitor's advice." The plaintiffs' action was dismissed, with costs.

Company Law and Practice.

Compensation to Directors.

THERE are not many of us who would care to be deprived against our will of a position which brings us in a steady remuneration, even if that remuneration be not very large; and particularly so if the duties which we are called upon to perform in connection with that position are not of a very onerous character. But it does from time to time happen that, for one reason or another, directors are deprived of their office, and it does also happen sometimes in such cases that payments are made to the directors who suffer such deprivation. I would not have my readers imagine that, by what I have said above, I am attempting to make any general allegation as to the easy time that directors have, or to suggest that the vast majority of them do not earn their fees, but there certainly are still directorships which cannot be justified.

In any event, well earned or not, directors' fees in these hard times are usually welcome, and those who are called upon to relinquish them sometimes not unnaturally suggest a *quid pro quo*. These suggestions almost invariably arise in connection with a change of control of the affairs of the company; in the ordinary case of, for example, the removal of a director from office by extraordinary or special resolution, no question of compensation can arise. In the case, though, of a director in the full flush of office, he not unnaturally feels that, if he is to retire of his own accord, it ought to be made worth his while.

It is in one of two ways, as a general rule, that a change of control comes about: either by a sale of the company's undertaking, or some part of it, or by a sale of a substantial block of the company's shares. Now, the Legislature has said that in either of such cases a director cannot obtain, and retain, compensation for his loss of office, except under very definite safeguards. The underlying principle would seem to be that if a director does obtain such benefits he does so at the expense of the shareholders, either indirectly, where an undertaking is sold, because the company in effect gets a lower price for its undertaking, or directly, where shares are sold, because the price paid for those shares is lower than it would otherwise have been.

Now, as to the first type of case, the sale of an undertaking, it is true to say that payments to directors as compensation for loss of office always have been illegal. It is part of the general law that a director can take no remuneration or benefit from the company of which he is a director except that to which, under the constitution of the company, he is expressly entitled; and there is little doubt but that to accept compensation for loss of office in such a case, whether directly out of the company's coffers, or out of the coffers of the purchaser of the company's undertaking, would be a breach of the general law. But the position is not so clear under the general law in the case of a purchase of shares, and the law on the subject has now been codified in s. 150 of the Companies Act, 1929; the last sub-section containing the qualification that nothing in the section is to be taken to prejudice the operation of any rule of law requiring disclosure to be made of payments by way of compensation for loss of office and of any other like payments to directors of a company.

The first two sub-sections of s. 150 deal with a sale of the undertaking. The first is as follows:—

> "(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company, and the proposal approved by the company."

The second sub-section then goes on to say that where a payment which is thereby declared to be illegal is made to a director the amount received is to be deemed to have been received by him in trust for the company. It will be observed that the first sub-section casts its net a good deal wider than is necessary merely to include therein payments made to a director by way of compensation for loss of office: the words "in connection with his retirement from office" seem to indicate a wide scope for the section. Thus, take the case of a director who is also managing director, the fact that he retires from his position as a director will, under most forms of articles, cause him to vacate the position of managing director. Indeed, whether the articles so provide or not, such must inevitably be the result, for one could hardly be a managing director without being a director.

Now, it might possibly be said that such compensation as was payable to such a person as managing director was not paid to him as a director and was not therefore within the mischief of the section, but this seems to be a fallacy. Any payment of the kind indicated must inevitably be a payment made in connection with his retirement from office, for his ceasing to be managing director is a consequence which flows naturally from, and is clearly connected with, his retirement from office as a director. The approval of the proposal will be carried out so as to satisfy the requirements of the section if a resolution approving the same is passed by the company in general meeting as an ordinary resolution at a meeting of which due notice (including notice of the intention to propose the resolution) has been given.

So much in the first instance for cases which arise out of the sale of an undertaking. Now we come to the second branch—the sale of shares. There we pass on to s. 150 (3):—

"(3). Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders."

In this sub-section the matter is treated somewhat differently, and the onus is put on the individual who is to receive the payment to see that the offerees know the true state of affairs. It may, of course, be a very material factor in enabling them to make up their minds whether or no they shall accept the offer to know who is going to get anything out of it, and if so, how much. It might well be that if the directors did not get the compensation which is contemplated the offerees might get a larger price for their shares, and to that extent, therefore, they will be damnified by the proposed transaction.

The next sub-section provides for a fine of £25 for any director who fails to take reasonable steps to secure disclosure, and also for any person who has been required by any director to include the proper particulars in or send them with the offer. And this raises another point: what is to happen when the offer emanates, and emanates directly from, a source over which the director has no control. In the great majority of cases the offer is communicated in the first place to the board, who themselves circularise the shareholders with regard to it. But suppose an outsider makes the offer direct to the shareholders? Perhaps the answer is that any director who has been in treaty with the outsider as to his compensation should make it a term of any bargain that the appropriate particulars will be sent; but how can he see that such bargain is carried out?

There is, however, a much more important provision in sub-s. (4) than that dealing with a fine; for it goes on to provide that if the requirements of sub-s. (3) as to disclosure are not carried out any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

From the practical point of view one may ask how the facts relating to these things are going to be brought to light. One would imagine that there must be great numbers of cases where payments of the kind indicated are made and are never discovered. Further, what is to happen when they are discovered? What is the appropriate procedure? So far as the company is concerned, in the case of the sale of an undertaking, it would presumably sue the erring director.

But what would be the position of a person who had sold his shares as the result of an offer, in the later case? Could he, or would he be well advised to sue the director for his proportion of the wrongfully acquired money? The correct action would depend upon the circumstances of the individual case; but there seems to be a good deal to be said for an action for the administration of the trusts applicable to the sums wrongfully paid.

The section has been designed to check, so far as possible, attempts to evade the letter of the first four sub-sections: Read this:—

"(5) If in connection with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office."

So my readers will have to think of some other way of evading the provisions of the section.

A Conveyancer's Diary.

The Protection of Trustees.

I HAVE heard of a case which was before Clauson, J., quite recently and not yet reported, in which the learned judge seems to have expressed rather strongly that he was not prepared to apply s. 31 (1) (ii) of the T.A., 1925, in any case unless positively obliged to do so.

This brings me to consider quite a number of questions.

First, let us take s. 31 (1) (ii)—it is important—the section deals with the powers of maintenance of trustees, but introduces a new provision. After conferring a power of maintenance during infancy it enacts as follows:—

"(ii) If such person" (i.e., a person who is contingently entitled) "on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property . . . to him until he either attains a vested interest therein or dies, or until failure of his interest."

That, it will be noticed, is directory; there is no discretion given to the trustees. They *must* apply the income in payment to the beneficiary. The point to be noted is that there is no "saving clause," that is, no provision that it is subject to any contrary intention expressed or implied in the settlement.

The facts in the case which I have in mind were, so far as I have been able to ascertain them, that a testator who died before 1926, gave his residuary estate to trustees upon trust to accumulate the income for twenty-one years and then to divide the capital and accumulated income between such of his children as should be living at the end of that period.

Now, in that state of things, it is obvious that under s. 31 (1) (ii), when one of the children attains the age of twenty-one, he or she would be entitled to be paid the income of his or her share. There is, however, this "saving" provision contained in s. 31 (1), namely, that the section takes effect only "subject to" any prior interest, and so in the case in question Clauson, J., held that the trust to accumulate was "a prior interest." I doubt, with great respect, whether he was right, but must await a report of the case to see what his grounds for the decision were. It seems to me that there was no "prior interest," the interest being in fact the same, namely, for the benefit of the persons contingently entitled.

However that may be, it is of some interest to notice how the draftsmen of the Act set to work. In most of the sections in the earlier statutes there was a saving provision to the effect that any contrary intention to be gathered from the instrument creating the trust should prevail. I need only refer to the C.A., 1881, s. 10 (3), and particularly to the L.P.A., 1922, s. 88 (6); also to s. 10 (3) of the T.A., 1893.

It appears that the draftsmen responsible for the "New Law of Property Acts" thought that it was not necessary to repeat the saving clauses in each case, and tried to make what I may call a compendious saving clause in s. 69 (2) of the T.A., 1925.

That sub-section reads:—

"The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust and have effect subject to the terms of that instrument."

I like that "instrument, if any"!

The effect of this enactment seems to be that the *powers* of trustees are made subject to the terms of the instrument (if any) creating the trust, but the powers only. So it would

appear (*a*) directions to trustees (as, for example, in s. 31 (1) (ii) of the T.A., 1925), (*b*) powers given to persons other than the trustees, and (*c*) indemnities given to trustees, are not within the sub-section. I must consider these exceptions more fully in another Diary, but I may say that the most important of the exceptions appears to be with regard to indemnities, which seem to be afforded to trustees, even though there should be a contrary intention expressed in the instrument (" if any " !) creating the trust. It is true that almost all clauses in settlements which deal with this are framed with the intent of relieving trustees from liability, and not generally with success. In fact, in earlier times, the court almost always regarded such clauses with suspicion, and in few cases were they really a protection. I will try to pursue this question, which has not, I think, hitherto received the attention which it should.

Land Registry Practice.

I have had passed to me some correspondence between the Land Registry and a solicitor who I will call Mr. A. I regret that I am not able to deal with it this week. The complaint made is that papers sent for registration are sometimes held up (and loss of priority, therefore, resulting) on merely technical grounds such as the absence of certified copies of documents, the originals of which have been lodged. I will make my comments on this when I can. In the meantime, I do not wish it to be thought that the correspondence has been overlooked.

Landlord and Tenant Notebook.

Alternative Rights and Obligations.

THERE is a principle of the law of contract which is tersely expressed by the maxim *electio est debitoris*. Some time ago an ultimately unsuccessful attempt was made in Scotland to establish that the contract which binds landlord and tenant was an exception, but I doubt whether the effort will be repeated.

The only possible qualification I am aware of is afforded by the somewhat peculiar case of *Jenkins* v. *Green* (No. 1) (1858), 27 Beav. 437. This was an action for specific performance of an agreement to let a farm " containing 437 acres, or thereabouts . . . except 37 acres thereof." The objection was raised that the parcels were not defined, so that the agreement was too vague to be enforced ; but it was held that the landlord could make the selection before completion, failing which the tenant could choose his acres. This was in accordance with the general principle ; but the court also said that the landlord must make his selection " not oppressively," i.e., not so as to make it impossible or difficult for the tenant usefully and advantageously to occupy the rest of the farm. However, the case is a remarkable one, and the decree reads like a pre-Birkenhead attempt to approximate the law of realty to that of personalty.

But the *electio est debitoris* rule does not override the principle that an ambiguous lease is construed in the grantee's favour, a corollary to the *contra proferentem* rule. It is mainly in connection with options to determine that these questions arise, and it was held in *Dann* v. *Spurrier* (1803), 3 B. & P. 399, that if an agreement for a lease provides for a habendum for " seven, fourteen or twenty-one years," but does not say whether the landlord or the tenant is to have the option, it belongs to the tenant only.

The authority of this case was not disputed in *Powell* v. *Smith* (1872), L.R. 14, Eq. 85, an action for specific performance brought by an intending tenant of a farm on a large estate. The agreement, a " rough " one, said " lease to be for seven, fourteen or —— years from the 29th September, 1870." The tenant entered under the agreement, and when it came to completion the defendant refused to grant a lease which did not give him, the defendant, the right to determine at seven years. The fact that all the other farms on the estate were so let had something to do with his attitude, but in the absence of evidence that the plaintiff had known of this practice, which would have established fraud, the circumstance was irrelevant, and the agreement was construed as giving the tenant the right to the options.

The complicated provisions of the lease between the parties in *Stewart* v. *Massett* (1924), 69 SOL. J. 72, were construed by means of an originating summons. The term ran from Ladyday 1910 for twenty-one years at a progressive rent —£65, £70 and £75 for the first, second and third periods of seven years. There were two provisoes. By the first, either party might determine the lease at the end of seven or of fourteen years by giving six months' notice. By the second, the tenant by giving six months' notice before the end of the twenty-one-year term could have a seven years' lease from Ladyday 1931 at £80 a year. What happened was that in August, 1923, the tenant gave notice under the second proviso demanding a seven years' lease, from 1931. To which the landlord replied by a notice determining the lease at Ladyday 1924, pursuant to the first proviso. And, having to make something of it all, the court decided that the second proviso was subject to the first, so that the landlord's exercise of the first (though after the tenant had purported to exercise the second) overrode the second.

The Scots decision I referred to was purely a matter of alternative obligations. The landlord in *Christie* v. *Wilson* [1915] S.C. 645, had agreed " to supplement the present water supply so as to make it adequate or otherwise to lay a pipe from the well beside the steading, and if need be to provide a pump therefor so as to bring water up to the dwelling-house." The tenant claimed that it was for him to say which method should be adopted, and succeeded in getting the court of first instance to hold that the option was with him as " the natural effect of the landlady agreeing to one of two alternatives." This decision was reversed on appeal, the higher court being less concerned with natural effects than with the established principles. As a matter of history, these will be found in 1 Roll. Abr. (Y) 446, where we are told that if a condition be that an obligor shall enfeoff a man of lands in D or S upon request, the obligor has his election of which of the two he shall enfeoff him. While ancient authority for the other rule of construction is provided by the *Bishop of Bath's Case* (1606), 6 Coke 34A, in which " it was resolved, that in construction of law on the commencement of leases, the strongest shall be taken against the lessor, and most beneficially for the lessee."

Our County Court Letter.

CONTRACTS BY RECEIVERS FOR DEBENTURE-HOLDERS.

IN a recent test case at Shrewsbury County Court (*Ashworth Bros.* v. *Bibby and Langford*) the claim was for £100, as damages for breach of contract, in the following circumstances : (1) The plaintiffs were farmers, and had formerly supplied milk to the North Shropshire Milk Depot Ltd., which got into financial difficulties, whereupon the first defendant, as debenture-holder, appointed a receiver ; (2) the latter called the milk suppliers to a meeting (in September, 1932) which was attended by the second defendant, who was a director of Cheshire Dairies, Ltd. (a prospective purchaser of the business), and was also interested in a proposed new company ; (3) the second defendant appeared to take charge of the proceedings, and announced that he was prepared to pay for milk at Cadbury's prices for twelve months ; (4) in pursuance of this offer, the plaintiffs had entered into a contract (on those terms) with the old company's manager, whose services had been

retained by the receiver ; (5) nevertheless the receiver cancelled the contract in January, 1933, and intimated that he was only prepared to take future supplies at reduced prices. The plaintiffs contended that the first defendant was liable, on the contract made by his receiver (or by the latter's manager), and that the second defendant was liable because he had intermeddled, and had therefore incurred personal liability. The first defendant's case was that, under the debentures, the receiver was the agent of the company, and the manager was not the servant or agent of himself as debenture-holder. The second defendant denied that the manager was his servant or agent, or that he had made himself personally liable. His Honour Judge Samuel, K.C., observed that the second defendant should have apparently been sent about his business, but he had not incurred personal liability by his intervention. As the receiver was the agent of the company the first defendant was also not liable. Judgment was therefore given for the defendants, with costs.

DANGEROUS YEW CLIPPINGS.

THE case of *Ponting* v. *Noakes* [1894] 2 Q.B. 281 (in which a colt had trespassed) was distinguished in the recent case of *Woolliams* v. *Cholmondeley*, at Stow-on-the-Wold County Court. The claim was for £20 as damages for negligence, the plaintiff's case being that (1) in the autumn of 1933, the defendant's servants had cut a yew hedge, and the clippings were allowed to fall over some iron railings into the plaintiff's field, (2) they remained there until April, 1934, when they were eaten by the plaintiff's sheep, with the result that six ewes and eight lambs died, as appeared from the dead yew found in their paunches. It was submitted that there was no case to answer, as (1) the dead sheep were opened and disposed of without the defendant's knowledge, and without any inspection by his veterinary surgeon, (2) the plaintiff and his father had occupied their field for many years, and knew of the yew trees when they became tenants. The submission was overruled, and the defendant's case was that (*a*) the distance of the hedge from the iron railings varied from 1 to 2 feet, and his gardener (after cutting the hedge) had cleaned up the clippings, (*b*) there was no evidence that the yew, which caused the death of the sheep, came from the defendant's hedge. His Honour Judge Kennedy, K.C., held that there was negligence by the defendant, but no contributory negligence. Judgment was, therefore, given for the plaintiff, with costs. Compare *Cheater* v. *Cater* [1918] 1 K.B. 247, in which the owner of *overhanging* yew trees was held not liable for the loss of his neighbour's mare, the neighbour having taken the land with knowledge of the existence of the yew trees.

Obituary.

MR. H. REED.

Mr. Haythorne Reed, until recently a Judge of the High Court of Zanzibar and Nyasaland, died in hospital at Barberton, Eastern Transvaal, on Thursday, 18th October, at the age of sixty-one. Mr. Reed, who was educated at Bath College and Emmanuel College, Cambridge, was called to the Bar by the Inner Temple in 1897, and went the Midland Circuit. He was appointed Assistant Magistrate at Zanzibar in 1909, and Town Magistrate in 1910. He became Assistant Judge, Zanzibar, in 1920, Puisne Judge, Tanganyika, in 1925, and Judge of the High Court, Nyasaland, in 1927.

MR. T. H. WRIGHT.

Mr. Thomas Howard Wright, of New-square, Lincoln's Inn, Treasurer of the Inner Temple, died at his home in Bayswater, on Monday, 29th October, at the age of eighty-four. He was educated at Trinity College, Oxford, and was elected a Fellow of Merton College in 1874. He was called to the Bar by the Inner Temple in 1881, and practised on the Chancery side. Mr. Wright was one of the Senior Benchers of his Inn, and succeeded Sir E. W. Hansell, K.C., as Treasurer for this year. He was a member of the Committee appointed by the Lord Chancellor in 1932 to consider the organisation of legal education.

MR. G. L. MARTIN.

Mr. George Legat Martin, solicitor, partner in the firm of Messrs. Wright, Ellis & Martin, of Seaham Harbour, died at the Royal Infirmary, Sunderland, on Thursday, 25th October. Mr. Martin, who had been connected with his firm for forty years, was admitted a solicitor in 1924.

MR. S. PARSONS.

Mr. Stanley Parsons, LL.B., solicitor, of Par, Cornwall, died on Friday, 19th October, at the age of fifty. Mr. Parsons, who was educated at Manchester Grammar School and Victoria University, Manchester, was admitted a solicitor in 1906. He had been practising in the St. Blazey district for twenty-three years.

MR. O. T. PRICE.

Mr. Octavius Thomas Price, solicitor, of Newent, Gloucestershire, died on Saturday, 27th October, at the age of eighty. Mr. Price, who was admitted a solicitor in 1886, was Registrar of Newent County Court and also Clerk to the District Council.

Books Received.

The Annual Practice, 1935. Fifty-third Annual Issue. By W. VALENTINE BALL, a Master of the Supreme Court, R. F. BURNAND, a Master of the Supreme Court, and F. C. WATMOUGH, of Lincoln's Inn, Barrister-at-Law, assisted by PHILIP CLARK and T. HYDE HILLS. Demy 8vo. pp. ccccxlii, and (with Index) 3176. London : Sweet and Maxwell, Ltd. ; Stevens & Sons, Ltd. £2 2s. net.

The A.B.C. Guide to the Practice of the Supreme Court, 1935. Thirtieth Edition. By F. R. P. STRINGER, of the Central Office of the Supreme Court. Crown 8vo. pp. 212. London : Sweet & Maxwell, Ltd. ; Stevens & Sons, Ltd. 7s. 6d. net.

Bankruptcy Administration. By W. J. BACK, A.S.A.A. 1934. London : Gee & Co. (Publishers), Ltd. 1s. net.

Money without Gold. By Sir MAURICE JENKS, BT., LL.D., F.C.A. 1934. London : Gee & Co. (Publishers), Ltd. 6d. net.

Mr. Pewter. By A. P. HERBERT. 1934. pp. xv and 206. London : Methuen & Co., Ltd. 5s. net.

Sale of Foods and Drugs. 1934. London : H.M. Stationery Office. 4d. net.

The Howard Journal. Vol. IV. No. 1. 1934. London : The Howard League for Penal Reform. Price 1s.

The Lawyer's Companion and Diary for 1935. Eighty-ninth Annual Issue. Edited by MORTON F. PARISH. London : Stevens & Sons, Ltd. ; Shaw & Sons, Ltd. Prices from 7s. 6d. to 13s.

Woodward's Road Traffic Acts and Orders, 1930-1934. Edited by E. GILBERT WOODWARD, M.A., B.C.L., of the Northern Circuit of the Middle Temple, Barrister-at-Law, and JOHN COLPOYS CHAMBERS, B.A. (Oxon), Solicitor of the Supreme Court. 1934. Demy 8vo. pp. xiii, and (with Index) 639. London : Eyre & Spottiswoode (Publishers), Ltd 27s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited London, Liverpool and Birmingham.]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Effect of Renunciation by Executor-Trustee.

Q. 3065. By his will, dated 1891, A.B. appointed his wife W.B., his son J.H.B. and his friend C.D. to be his executors and trustees, and after the gift of his household furniture to his wife absolutely the testator bequeathed all his real and personal estate to his trustees upon trust for sale, and to stand possessed of the proceeds upon the trusts therein mentioned. W.B. died in 1895. A.B., the testator, died in 1906, and his will was proved by his son J.H.B., one of the surviving executors, C.D., the other surviving executor, having renounced probate. In 1914 J.H.B. appointed E.F. and G.H. new trustees of the said will in place of himself and the said C.D. The said appointment contained a recital that no part of the real property of the testator had been sold, but that the said J.H.B. had out of the personal estate paid the funeral and testamentary expenses, debts and death duties, and distributed the proceeds as directed by the will. It also recited the desire of J.H.B. to retire from the trusts. The new trustees, E.F. and G.H., have contracted as trustees to sell a small plot of land, part of the deceased's estate, and the purchaser's solicitor has raised a requisition objecting to the title on the ground that, as C.D. had merely renounced his executorship and not disclaimed the trusts of the will, he was still a trustee and the appointment of new trustees by the proving executor was invalid. In support of this the purchaser's solicitor quotes "Emmet on Perusing Titles," who states that a renunciation of an executorship is not in itself a renunciation of the trusteeship. Can you give any authority for this contention ?

(1) Can the non-proving executor be ignored and a conveyance taken safely from the new trustees ; or

(2) Ought the non-proving executor to—

(*a*) join in the conveyance to the purchaser.

(*b*) himself appoint a new trustee to act with him, so that he and the new trustee may convey to the purchaser.

A precedent and authority will be appreciated.

A. Emmet "Notes on Perusing Titles," 12th ed., Vol. II, p. 492, states on the authority of *Re Gordon* (1877), 6 Ch. D. 531, "But where an executor is also the trustee of a will, renunciation of probate will not alone amount to a disclaimer of his office of trustee and the trusts attached to it (although it may be some evidence thereof) *unless* the trusts of the real and personal estate are so combined that one cannot be performed without the other." Disclaimer may be by conduct (*Re Birchall* (1889), 40 Ch. D. 436). In the case submitted it would certainly appear that the trusts of real and personal estate are so combined that the one cannot be performed without the other. Emmet (*ubi sup.*) points out that it was held in *Mucklow* v. *Fuller* (1821), Jac. 198, that the taking out of probate will amount to an acceptance of the trust, and goes on to say : "It is submitted that this case would not now be followed, because the office of executor and trustee are in no way connected. See *In re Ponder* [1921] 2 Ch. 59 ; *In re Pitt* (1928), 44 T.L.R. 371 ; *In re Yerburgh* [1928] W.N. 208." If the proposition itself is no longer true, then the converse is also probably not true, as appears from *Re Gordon* (*ubi sup.*).

(1) We are of opinion that it is probable (and we go no further) that the non-proving executor-trustee may be ignored and a conveyance taken from the new trustees.

(2) We suggest that an endeavour should be made to have the appointment of E.F. and G.H. confirmed and as on the retirement of J.H.B. and C.D., and as to C.D. in so far as he is or may be a trustee. We cannot quote a precedent on these lines, but the document should present no difficulty.

Advances by Local Authorities for Repair of Houses.

Q. 3066. We shall also be glad if you will advise us of the requisite conditions under which it is possible to claim assistance (which we believe amounts to one-half of the cost) from the local or central authority for putting in repair a dwelling-house which has been condemned under an improvement or other scheme.

A. The questioner is evidently referring to the power of local authorities under s. 47 of the Housing Act of 1930, which applies the provisions of s. 92 of the Housing Act, 1925. The sections give power to a local authority or county council to advance money to a person to repair a house, where having regard to the cost of the repairs and the financial position of the owner, it is considered reasonable to give him assistance. The amount is not limited to one half. Application should be made to the local authority with details and estimate of cost of repairs and particulars of the applicant's interest and of his or her financial position. The authority is under no obligation to make any advance.

Costs of Administration—"Letters of Administration under Seal," "Extracting" and "Clerk's Fee"—Services rendered.

Q. 3067. In a book of precedents of costs of administering an intestate's estate I find after detailed charges for instructions, perusing deeds, preparing Inland Revenue affidavit, oaths for administrators, bond and so on, the following items :—

Letters of administration under seal ..	£4 15 0
Extracting	0 13 4
Cl rk's fee	0 7 6

Please let me know what actually are the services rendered, or supposed to be rendered, for which these items are the charges.

A. These are scale fees depending in amount upon the value of the deceased's estate, to which no definite services can be assigned, so far as the writer is aware.

First Mortgage to a Building Society—Second and Registered Mortgage to an Individual—Re-advance by the Society—Tacking.

Q. 3068. Several years ago A mortgaged certain property to a building society. He afterwards borrows from B on security of a second mortgage which was registered under the Land Charges Act, 1925, but no notice thereof was given to the society (at the express request of A). Subsequently A obtains a re-advance from the building society secured, of course, by the original mortgage. Can the society tack this re-advance to the amount previously owing to them by A in priority to B's mortgage ?

A. Registration of the second mortgage under L.C.A., 1925, constituted actual notice thereof to the building society (L.P.A., 1925, s. 198 (1)). We do not think that a re-advance is in essence different from a further advance. If that is so, then the society cannot tack the amount of the re-advance to the amount previously owing to it (L.P.A., 1925, s. 94). It is suggested that if a person borrows on mortgage (say) £1,000 and repays £400 and then executes a further charge for £300 the transaction is in essence no different from the case of a re-advance.

To-day and Yesterday.

LEGAL CALENDAR.

29 OCTOBER.—Sir Charles Wetherall made his entry into Bristol as Recorder at about 11 o'clock on Saturday morning, the 29th October, 1831. "He was furiously assailed by the lower orders with missiles as well as with yells and hooting. We are happy, however, to add that the hon. and learned gentleman has sustained no personal injury." So wrote *The Times*. This was the beginning of the destructive Bristol Riots when Sir Charles, who was very negligent in his attire, was said to have escaped the fury of the mob in the disguise of a clean shirt and a pair of braces.

30 OCTOBER.—On the 30th October, 1845, Queen Victoria opened the new Hall of Lincoln's Inn. She was attended by a numerous suite, including the Duke of Wellington and the Lord Chancellor. The Treasurer presented an address and, receiving the honour of Knighthood, became Sir John Simpkinson. Prince Albert, having been admitted a Bencher, appeared in legal costume. A splendid collation was served, and after the Queen departed the repast continued under the chairmanship of Lord Campbell.

31 OCTOBER.—A strange tale was told at the Old Bailey when Alice Lowe, a young woman of nineteen, was tried on the 31st October, 1842, on a charge of stealing two miniatures, three gold snuff boxes, a gold box and other valuables from Viscount Frankfort de Montmorency. She had lived with the noble lord for a couple of months, and her defence was that he had given her the articles. When the prosecuting counsel persisted in calling her "a gay woman," she fell from her chair in a hysteric fit. Erskine, J., summed up kindly and when the jury announced an acquittal, there were shouts of applause in court.

1 NOVEMBER.—On the 1st November, 1702, James Ogilvy, Earl of Seafield, succeeded Lord Marchmont as Lord High Chancellor of Scotland.

2 NOVEMBER.—On the 2nd November, 1833, there was a fine wrangle in the Court of Exchequer over the question of entering appearance. Mr. Rich, clerk of the court, told a man that he must appear by attorney. "No, he may appear in person," said Mr. Baron Bailey. "Not without an order of the court, and he must make formal application for that," rejoined Mr. Rich, faithful to red tape. "Certainly, he can without any order of the court . . . Let the appearance be entered at the office." "It cannot be entered at the office without drawing up an order of court." Here a barrister said that in another case the court had ordered the book to be brought down and appearance entered. "I believe you are mistaken," said Mr. Rich, "for I entered it in the minute-book." "Well then, enter it in your minute book now," said the judge triumphantly. (Applause).

3 NOVEMBER.—On the 3rd November, 1660, Sir Harbottle Grimston was appointed Master of the Rolls. It was said that he paid Lord Clarendon £8,000 for the office. If this was so, he got his money's worth, for, though he was then sixty-six, he lived for twenty-three years more and only relinquished his place with his breath. "He had a nimble fancy, a quick apprehension, a rare memory, an eloquent tongue and a sound judgment." His hospitality, charity and impartiality were acknowledged.

4 NOVEMBER.—In 1832, the health of Lord Chief Justice Tenterden broke down. When Lord Brougham said: "You will kill yourself, Chief Justice," he replied: "It is done already." Ill as he was, he insisted on presiding at the trial of the Mayor of Bristol for neglect of duty on the occasion of the riots there, but on the third day, he was confined to his bed. Thereafter, he insisted on receiving reports on the progress of the proceedings. He sank, however, and on the 4th November, he died, his last words being: "Gentlemen of the jury, you are all dismissed."

THE WEEK'S PERSONALITY.

"Seafield was finely accomplished, a learned lawyer, a just judge, courteous and good natured, but withal so intirly abandoned to serve the court measures, be they what they will, that he seldom or never consulted his own inclinations, but was a blank sheet of paper which the court might fill up with what they pleased. As he thus sacrificed his honour and principles, so he likewise easily deserted his friend when his interest (which he was only firm to) did not stand in competition. He made a good figure and proceeded extremely well in the Parliament and Session where he despatched business to the general satisfaction of the judges." Such was the Earl of Seafield, Lord High Chancellor of Scotland, as seen by a political opponent. Another account says that "he affects plainess and familiarity in his conversation, but is not sincere; is very beautiful in his person, with a graceful behaviour, smiling countenance and a soft tongue." He was one of the most active promoters of the measure for the union with England. "When he, as Chancellor, signed and engrossed the exemplification of the Act of Union, he returned it to the clerk in the face of parliament with this despising and contemning remark: 'Now there's ane end of ane old sang'."

THE OLD BAILEY.

The recent centenary celebrations at the Central Criminal Court opened another chapter in the long history of London's justice seat, which at each stage of its development has succeeded, though sometimes on a rather doubtful basis, in being an object of admiration. In 1720 we read of the justice hall as "a fair and stately building very commodious for that office having large galleries on both sides or ends for the reception of spectators . . . It cost about £6,000 the building." This commodiousness did not avert an outbreak of gaol fever in 1750 which carried off a lord mayor, a couple of judges and several minor ministers of justice. When a modernising generation opened the New Sessions House in 1774 the public noted with delighted amazement that it contained "a large room appropriated for the use of the witnesses to prevent their standing in the yard exposed to the inclemency of the weather or being at public houses." After the havoc of the Gordon riots "a very elegant building" sprang into existence. Learning by past experience, the entrance was made narrow to prevent a sudden ingress of the mob, and ventilation was improved, for "the havoke" made by gaol fever in 1750 was still remembered as "a dreadful admonition."

A HUNDRED YEARS AGO.

In connection with the centenary I have found considerable interest in looking over a book called "Old Bailey Experiences," describing the administration of the criminal law there just before the passing of the Central Criminal Court Act, 1834. The author comments strongly on "the rapid and indecent manner in which trials are usually conducted." The average time was calculated to be eight and a half minutes and the City judges were "frequently petulant of any interruption or impediment to their usual dispatch which manifests itself in much acrimony between themselves and counsel." The lack of an appeal court was acutely felt as a check on this hasty carelessness which put on trial prisoners who hardly knew from one minute to another when they would be called to the dock. One curiosity of the Old Bailey, however, the book does not discuss—the two dinners served, one at three and the other at five, for the sustenance of the judges who worked in shifts, the trials proceeding continuously. Marrow pudding always formed part of the first course and beef steaks were the staple of the second. The chaplain, who had to preside at the lower end of the table, sat through both, persevering "from sheer sense of duty till he had acquired the habit of eating two dinners a day."

Notes of Cases.

Court of Appeal.

Monk *v.* Warbey and Others.

Greer, Maugham and Roche, L.JJ. 17th and 18th October, 1934.

INSURANCE — MOTOR CAR — LENT TO FRIEND — FRIEND UNINSURED—ACCIDENT—CAR OWNER'S THIRD PARTY INSURANCE—LIABILITY TO PERSON INJURED—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43), s. 35.

Appeal from a decision of Charles, J. (78 SOL. J. 223).

The motor-car of W. lent by him to K. and negligently driven by M. injured the plaintiff, who sued all three. An interlocutory judgment was signed against them, but M. and K. had no means to satisfy it and were not insured against third party risks. Charles, J., held that W., having lent his motor car to uninsured persons, without having taken out an insurance policy against third party risks while it was out of his control, was liable to the plaintiff in damages.

GREER, L.J., dismissing the appeal, said that the Third Parties (Rights against Insurers) Act, 1930, which protected persons injured by the negligence of motor drivers, by conferring on third parties rights against the insurers on the bankruptcy of the insured, left a difficulty remaining which s. 35 of the Road Traffic Act, 1930 was designed to meet, by making it unlawful to use or permit any other person to use a motor vehicle unless there was in force in relation to the user of the vehicle an insurance policy covering third party risks; penalties were provided for contravention of these requirements. It had been argued that it was not intended to give a civil remedy for breach of the statute, in addition to the heavy penalties imposed, but this case fell exactly within the words of A. L. Smith, L.J., in *Groves* v. *Lord Wimborne* [1898] 2 Q.B. 402, at p. 407. *Primâ facie*, a person injured by breach of a statutory duty could recover damages against the person guilty of the breach, unless the Act showed that this was not intended. Here the whole purpose of the statute showed that it was intended. As to *Phillips* v. *Britannia Hygienic Laundry* [1923] 2 K.B. 832, it was dangerous to take one or two observations from their juxtaposition and treat them as the *ratio decidendi*. The correct view was expressed by Atkin, L.J., at p. 841. Since the section gave this right, the damages in the present case were not too remote, but were the very thing aimed at. Further, the action against W. was not premature. There need be no quantification of damages before issue of the writ. The cause of action was complete when there was a breach of the statutory duty causing damage, and it was known that the other defendants were financially unable to satisfy the judgment and were not insured.

MAUGHAM and ROCHE, L.JJ., agreed.

COUNSEL: *Monier-Williams*, and *Schapiro*; *Carr*, K.C., and *G. Oliver*.

SOLICITORS: *Clifford-Turner, Hopton & Lawrence*; *Pattinson and Brewer*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law]

Attorney-General *v.* Racecourse Betting Control Board.

Lord Hanworth, M.R., Romer and Maugham, L.JJ. 26th, 27th and 30th July, and 19th October, 1934.

BETTING—TOTALISATOR—BETS OFF RACECOURSE—PLACING BETS—COMMISSION—RACECOURSE BETTING ACT, 1928 (18 & 19 Geo. 5, c. 41).

Appeal from a decision of Eve, J. (78 SOL. J. 207).

The Board established by the Racecourse Betting Act, 1928, and authorised to operate totalisators on approved racecourses, entered into agreements with the London and Provincial Sporting News Agency (1929), Ltd., which ran a "blower service," and with Tote Investors, Ltd., which undertook to procure the placing of bets by persons off the course, collecting them and telephoning them to the totalisators on the course, in consideration of commission on all effective bets so placed. There was evidence that it was impracticable to operate totalisators if betting were confined to people actually on the course. Eve, J., held that the operations of the Board were not *ultra vires*.

Lord HANWORTH, M.R., in giving judgment, said that the principles affecting the doctrine of *ultra vires* were explained in *Ashbury Railway Carriage & Iron Co.* v. *Riche*, L.R. 7, H.L. 653, and *Baroness Wenlock* v. *River Dee Co.*, 10 App. Cas. 354, at p. 362. The question was whether these activities were incidental to the Board's statutory powers and duties. There was no indication that the Act made a distinction between "on the course" and "off the course" betting. The distinction in the Betting Act, 1853, was artificial in relation to the question of what powers were by reasonable implication conferred by this Act. By reasonable implication the power was conferred on the Board to act as it had in this connection. There was also power to pay to Tote Investors, Ltd., to enable them to acquire accommodation on authorised racecourses. Eve, J., however, was wrong in holding that there was power to make contributions towards the initial expenses of the company. These were not payments made in relation to bets placed on the totalisator, but payments made to start and support the company and relieve it of expenses it should properly have borne. This was *ultra vires*. Save on this point, the appeal must be dismissed. The appellant should pay the respondents three-fourths of their costs.

ROMER and MAUGHAM, L.JJ., agreed.

COUNSEL: *Sir Stafford Cripps*, K.C., *Beyfus*, K.C., and *C. Radcliffe*; *Simonds*, K.C., and *W. M. Hunt*; *Evershed*, K.C., and *Andrewes-Uthwatt*; *Charles Russell*.

SOLICITORS: *Arthur Benjamin & Cohen*; *Simmons and Simmons*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Aschkenasy *v.* Midland Bank Limited.

Lord Hanworth, M.R., Slesser and Romer, L.JJ. 18th and 19th October, 1934.

BANKER—TRANSFER OF FUNDS FROM SWISS TO ENGLISH BANK—HELD TO CREDIT OF RUSSIAN BANK—NO REPLY TO NOTIFICATION OF CREDIT—SUBSEQUENT CLAIM TO TRANSFERRED FUNDS—NO PRIVITY OF CONTRACT.

Appeal from a decision of Roche, J. (78 SOL. J. 174).

The plaintiff, having inherited a prosperous banking business in Russia, from time to time placed sums of money in different countries. In 1913 he had a large credit at a Swiss bank to which he gave written instructions to transfer a sum of francs worth £18,044 to the defendants to be held to the credit of the Moscow Industrial Bank. In their books the defendants credited the Moscow Bank with this sum on account of the plaintiff. Communications sent by them to the bank were returned and apparently were never received. The plaintiff now claimed this sum from the defendants, contending that they had never transferred it to the Moscow Bank. Having left his books behind when he fled from Odessa at the Russian revolution, he did not know whose the money really was, but said that if he recovered it he would hold it for his client, whoever he might be. Roche, J., held that the action failed.

Lord HANWORTH, M.R., dismissing the appeal, said that to succeed the plaintiff must establish privity of contract between himself and the defendants. There was no question of following up a chattel or the proceeds of a chattel. No privity of contract existed.

SLESSER and ROMER, L.JJ., agreed.

COUNSEL: *Van den Berg*, K.C., and *H. Murphy*; *Hilbery*, K.C., and *F. Tucker*, K.C.; *W. H. Lewis*.

SOLICITORS: *Dehn & Lauderdale*; *Coward, Chance & Co.*; *Treasury Solicitor*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Stokes *v.* Little.

Lord Wright, Slesser, L.J., and Talbot, J.
10th and 17th October, 1934.

Landlord and Tenant—Controlled Premises—Possession by Landlord—Failure to Register—Subsequent Registration—Effect—Rent and Mortgage Interest Restrictions Act, 1923 (13 & 14 Geo. 5, c. 32), s. 2—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 Geo. 5, c. 32), s. 2.

Appeal from Bow County Court.

In 1923, the plaintiff bought a house in the Metropolitan Police district, to which the Rent and Mortgage Interest Restrictions Act, 1923, applied. On the 10th October, 1932, she came into possession of the whole of it and, accordingly, under the provisions of s. 2, the Act ceased to apply to it. She subsequently let it to the defendant at 25s. a week. The rateable value was £13 a year, and under the Act, the standard rent would have been 8s. 6d. a week. On the 18th July, 1933, the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, was passed. The house fell within the definitions of s. 2 (1), which excluded certain dwelling-houses from the application of s. 2 of the Act of 1923, by virtue of which the decontrol had taken effect. It was, however, provided by s. 2 (2) of the new Act, that if the landlord of such a house "claims that, by virtue of the said s. 2 of the Act of 1923, the principal Acts had ceased to apply to the dwelling-house before the passing of this Act, he shall within three months after the passing of this Act make . . . application in the prescribed form for the registration of the dwelling-house," but if no such application were made, the dwelling-house was to be "deemed a dwelling-house to which the principal Acts apply." It was, however, provided "that if on application to the County Court . . . the court certifies that there was reasonable excuse for the failure to make application . . . within the time aforesaid, and application for registration is made within seven days after the certificate has been granted, then, if the principal Acts had ceased to apply to the dwelling-house before the passing of this Act, s. 2 of the Act of 1923 shall, notwithstanding anything in the last foregoing sub-section, apply to the dwelling-house as from the date on which the application for registration is made." The landlord failed to register within three months as required by s. (2) of the new Act, but she obtained a certificate from the County Court and registered in January, 1934. In an action by her for arrears of rent, the tenant counter-claimed for rent overpaid, on the basis that he was only liable for the standard rent, and Judge Thompson held that the landlord, by failing to register in three months, had lost the benefit of decontrol as far as the existing tenancy was concerned, and that the subsequent registration only gave her the right to decontrol again should she ever come into possession of the whole of the dwelling-house.

Lord Wright allowing the appeal, said: That s. 2 (1) of the Act of 1933 not only stopped future claims that the houses within its scope were entitled to be excluded from the application of the Acts by virtue of s. 2 of the Act of 1923, but also brought back houses which had already been excluded by virtue of that section. Section 2 (2) dealt with the registration of dwelling-houses to which by virtue of s. 2 of the Act of 1923 the principal Acts had ceased to apply before the passing of the Act of 1933. It was to be inferred that, if the registration was made in due time, such a dwelling-house would be deemed to be one to which the principal Acts did not apply. Otherwise, the landlord was to be deemed to have lost his privileges under s. 2 of the Act of 1923. But this was "subject as hereinafter provided," and the proviso gave relief in cases of failure to register within the specified time under a certificate from the County Court. The tenant contended that, as under this proviso s. 2 of the Act of 1923 only applied "as from the date on which the application for registration is made," the Acts could only cease to apply by virtue of it, if at some subsequent date the landlord gained possession, so that whatever had been effected before registration to bring s. 2 (2) of the new Act into operation was to be cancelled. The words could not bear this construction. The proviso operated "notwithstanding anything in the last foregoing sub-section" (i.e., s. 2 (1)) under which s. 2 of the Act of 1923 was not to apply to certain houses, and which clearly included a reference where necessary to past events. Conversely, where the proviso said that the section was to apply, it must cover previous occasions when the landlord had possession. The proviso was an exception to the sub-section enacting that, under certain circumstances, a dwelling-house should "be deemed to be a dwelling-house to which the principal Acts apply," and dealt with present status determined by taking into account, as from the date of the application, actual events excluding the house from the operation of the Acts. Section 2 (5) of the new Act did not affect this construction. The principal Acts only applied during the period of default, and from the date of the application ceased to apply.

Slesser, L.J., and Talbot, J., agreed.

Counsel: *Casswell; H. Leon.*

Solicitors: *Simon, Haynes, Barlas & Ireland; Hamilton Hill & Evershed.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Allen *v.* Waters & Co.

Lord Hanworth, M.R., Romer, L.J., and Goddard, J.
16th and 17th October, 1934.

Local Government—County Council Hospital—Recovery of Expenses from Patient—Time Limit—Liability—Local Government Act, 1929 (19 & 20 Geo. 5, c. 17), ss. 14 and 16.

Appeal from Brompton County Court.

In October, 1933, the plaintiff's wife was injured, owing to the defective condition of certain steps. She remained in a London County Council hospital till January, 1934. An account for £16 2s. 11d. was subsequently rendered, and this had not been paid. In an action against the owners of the premises, the plaintiff recovered special damages, including this sum, it being held that, though more than six months had elapsed since the plaintiff's wife left the hospital, it was not debarred from recovering its charges from him.

Lord Hanworth, M.R., dismissing the appeal, said that it had been argued that by s. 14 (1) of the Local Government Act, 1929, which enacted that the Local Government Act, 1888, was to have effect as if the powers conferred by that Act on county councils (including the London County Council) included "the like powers with respect to the provision of places for the reception of the sick as are conferred on the local authorities by s. 131 of the Public Health Act, 1875," it was intended to incorporate also s. 132, which gave power to recover the expenses of a patient's maintenance, thus embodying in the Act of 1929 the six months' limit for such recovery. This argument failed. Section 131 was specifically mentioned, and s. 16 of the Act of 1929 made provision for the recovery of expenses. That section enacted that it should be the duty of every county council "to recover from any person who has been maintained by them in any institution . . . or from any person legally liable to maintain that person, the whole of the expenses incurred by the council." This imputed liability of the person against whom recovery was to be made. Section 16 (2) provided that "any expenses recoverable under this section shall without prejudice to any other remedy be recoverable as a civil debt." The remedies referred to were proceedings before justices or in the county court. In proceedings before justices, the six

months' limit would apply as part of the *lex fori*, but "other remedies" were contemplated, and if the county court were resorted to, there were no restrictions. There was an enforceable liability against the plaintiff who was therefore entitled to recover this sum.

ROMER, L.J., and GODDARD, J., agreed in dismissing the appeal.

COUNSEL: *F. McIntyre; H. S. Nichols.*

SOLICITORS: *Griffinhoofe & Brewster; Fortescue, Adshead and Guest.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Bevis *v.* Bevis.

Langton, J. 22nd October, 1934.

WIFE'S PETITION FOR DIVORCE—ADJOURNMENT FOR FURTHER EVIDENCE—DISMISSAL WITH VIEW TO APPEAL—ALIMONY *pendente lite* PENDING APPEAL—DISCRETION OF THE COURT TO ORDER—ORDER CONDITIONAL ON APPEAL BEING ENTERED WITHIN SIX WEEKS.

This was a wife's undefended suit for divorce in which Mr. Justice Langton, at the end of last term, delivered a considered judgment (reported 78 SOL. J. 569), holding that admissions contained in a "discretion" statement could not be used in a subsequent petition against the person making them in the main or sole evidence of adultery. The suit was adjourned to give the wife an opportunity of adducing independent evidence, if procurable, and if she were unsuccessful in that, of considering an appeal on the point of law to the Court of Appeal. Counsel for the petitioner now said that additional evidence could not be procured and it was therefore proposed to enter an appeal. As that course involved the dismissal of the petition, he asked that that should be done, but submitted that the existing order for alimony *pendente lite* should be continued until the result of the appeal was known. The court had jurisdiction to take that course in a proper case. He referred to *Jones v. Jones* (1) (1872), L.R. 2 P. & D. 333, and *Dunn* v. *Dunn* (1888), 13 P.D. 91.

LANGTON, J., dismissed the petition, and directed that the order for alimony should continue in being if the appeal were lodged in six weeks.

COUNSEL: *Noel Middleton* for the petitioner.

SOLICITOR: *Ernest A. Kite.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Volkers *v.* Volkers (Wingate cited) (on Answer).

Sir Boyd Merriman, P. 26th October, 1934.

PETITION FOR DISSOLUTION—ANSWER INCLUDING CROSS-PRAYER FOR RELIEF—ORDER STRIKING OUT PRAYER OF PETITION FOR WANT OF PROSECUTION—EFFECT OF JUDGMENTS IN *Sandler* v. *Sandler*—STAY OF PROCEEDINGS ON PETITION—PROPER ORDER—VARIATION OF REGISTRAR'S ORDER BY SUBSTITUTING STAY.

This was a wife's suit for divorce on the ground of her husband's alleged adultery. By his answer the husband pleaded condonation with a counter-charge of adultery, praying for dissolution of the marriage in the exercise of the discretion of the court. In May of this year, on the application of the husband, the Registrar had made an order striking out the prayer of the petition on the ground of the wife's failure to prosecute her suit. On the case coming on for hearing the President drew the attention of counsel to a technical difficulty on the pleadings, the question whether, in view of the judgments in the Court of Appeal in *Sandler* v. *Sandler* (78 Sol. J. 383), dismissal of the prayer of the petition did not really involve dismissal of the petition itself and therefore of the answer thereto. He proceeded to give notice of a new practice to be followed in similar cases in the future.

Sir BOYD MERRIMAN, P., in giving judgment dealing with the point of practice, after reviewing the authorities, said that, in view of the essence of the judgment of the Master of the Rolls in *Sandler* v. *Sandler, supra*, the order of the Registrar striking out the prayer of the petition in the present suit in effect dismissed the petition, although the Registrar did not, in fact, intend to do so. In order to give effect to the Registrar's intention in making that order, made at a time when Registry officials could not have been aware of reasonings in the judgments in *Sandler* v. *Sandler, supra*, that order would now be varied by substituting for it an order staying proceedings on the petition so that the suit might remain alive and the cross-prayer in the answer be dealt with. In future it should be known by all concerned that the proper order in cases where a respondent had a cross-prayer which it was intended to pursue and the petitioner did not proceed on the petition, would be to stay the proceedings on the petition, but not to dismiss the petition itself. In such cases, when the matter came before the court on trial, both the petition and the cross-prayer could be dealt with by the judge.

Evidence having been given, the respondent was granted a decree *nisi* on his cross-prayer, the discretion of the court being exercised in his favour.

COUNSEL: *R. H. Bayford*, for the husband respondent; *Tyndale*, for the party cited.

SOLICITORS: *J. D. Langton & Passmore: Howe & Rake*, for *G. E. Jannings*, Darlington.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

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Societies.

Central Criminal Court Bar Mess.

CENTENARY DINNER.

The Central Criminal Court Bar celebrated the Centenary of the Constitution of the Central Criminal Court, commonly called the Old Bailey, by holding a Dinner in the Hall of the Middle Temple, by permission of the Treasurer and Masters of the Bench, on Thursday, 1st November, when they entertained the Commissioners of the Central Criminal Court and others connected with the administration of criminal justice in London, past and present. The chair was taken by Mr. Eustace Fulton, Chairman of the Central Criminal Court Bar Mess.

The guests of the Bar included The Lord Mayor, Sir Charles Batho (acting), the Lord Chancellor (Viscount Sankey), the Lord Chief Justice (Lord Hewart), the Lord Warden of the Cinque Ports (the Marquess of Reading), Lord Atkin, Lord Darling, Lord Wright, Sir John Simon, Mr. Justice Avory, Mr. Justice Horridge, Mr. Justice Swift, Mr. Justice Acton, Mr. Justice Branson, Mr. Justice Talbot, Mr. Justice Hawke, Mr. Justice Humphreys, Mr. Justice Du Parcq, Mr. Justice Goddard, Mr. Justice Atkinson, The Dean of the Arches, Sir Philip Baker-Wilbraham, and the following Aldermen of the City of London: Sir George W. Truscott, Col. Sir T. Vansittart Bowater, M.P., Viscount Wakefield, Lord Marshall, Col. Sir Louis Arthur Newton, Sir Alfred Louis Bower, Lord Ebbisham, Sir John Edward Kynaston Studd, Sir William Phené Neal, Sir Maurice Jenks, Sir Percy Walter Greenaway, Sir Percy Vincent, Sir Harold George Downer, Sir William James Miller Burton, Sir George Thomas Broadbridge, Major Sir Frank Henry Bowater, Sir William George Coxen, Lieut.-Col. John Dawson Laurie, Sir Daniel George Collins, Mr Frank Joseph Coleman Pollitzer, Sir George Henry Wilkinson, Sir Samuel George Joseph, The Recorder of London, Mr. Holman Gregory, K.C., The Common Serjeant, Mr. Cecil Whiteley, K.C., The Commissioner, Judge Gerald Dodson, The Attorney-General, Sir Thomas Inskip, K.C., M.P., The Solicitor-General, Sir Donald Somervell, K.C., M.P., Sir Claud Schuster, K.C., The Chief Magistrate, Sir Rollo Graham Campbell, the Chairman London Sessions (Sir Percival Clarke), The Treasurer Middle Temple (Mr. St. J. Micklethwait, K.C.), The Director of Public Prosecutions (Sir E. Tindal Atkinson), Sir Archibald Bodkin, Mr. Frederick Mead, Sir William Jowitt, K.C., Sir Patrick Hastings, K.C., The President, Medico-Legal Society (Sir Bernard Spilsbury), The Commissioner, City Police (Sir Hugh Turnbull), the City Solicitor (Mr. Anthony Pickford), Judge Sir Alfred Tobin, K.C., The Chairman, Prison Commission (Mr. H. R. Scott), Sir Ernley Blackwell, The Chairman of the Bar Council (Sir Herbert Cunliffe, K.C.), Mr. Sheriff Twyford, Mr. Sheriff Pearse, The Clerk of the Central Criminal Court (Mr. Wilfrid Nops), The Registrar, Court of Criminal Appeal (Mr. Carrol Romer), Mr. Charles Wallace, The Chief Commoner (Mr. E. S. Beal), The City Remembrancer (Mr. Leslie Bowker), The Under Treasurer, Middle Temple (Mr. T. F. Hewlett), Mr. Seward Pearce, Mr. Under-Sheriff Jennings, Mr. Under-Sheriff Price, The Governor, Holloway Prison (Dr. Morton), The Governor, Brixton Prison (Captain Stevenson), The Senior Medical Officer, Brixton Prison (Dr. Grierson), Sir John Pakeman, Mr. Wallace Thoday, Mr. S. E. Longbottom, Mr. Frederick Whittingham, Major Godfrey Martin, Mr. Vernon Gattie, Mr. Beaufoi Moore.

Among the general company present were: Mr. P. H. Atkin, Miss M. J. Allardyce, Mr. L. F. Beccle, Mr. J. H. Bowman, Mr. G. P. Bancroft, Mr. L. A. Byrne, Mr. W. G. Bethell, Mr. R. J. Blackham, Mr. C. Leo. Burgess, Mr. J. S. Bass, Mr. R. H. Blundell, Miss Constance Colwill, Mr. E. H. Coumbe, Mr. R. Coppock, Mr. E. G. Culpin, Mr. R. S. Chapman, Mr. J. D. Cassels, K.C., M.P., Sir Alfred Callaghan, Mrs. F. A. Coxon, Sir Henry Curtis Bennett, K.C., Mr. Derek Curtis Bennett, Mr. H. F. Cornes, Mr. M. Campbell-Johnston, Mr. E. J. P. Cussen, Mr. W. D. Coleridge, Mr. John J. Caspell (Mayor of Sandwich), Lord Carnock, Mr. E. Cuddon, Mr. Ivan Cruchley, Mrs. Olive R. Cruchley, Mr. B. A. C. Duncan, Mr. H. C. Dickens, Mr. C. G. L. Du Cann, Mr. Ernest E. Dye (Mayor of Ramsgate), Mr. R. E. Dummett, Mr. J. F. Eastwood, M.P., Mr. J. P. Eddy, Mr. Henry Elam, Mr. Julian Fuller, Mr. Horace Fenton, Mr. Walter Frampton, Mr. W. B. Frampton, Mr. Wilfrid Fordham, Mr. T. M. Figgis, Mr. J. M. G. Griffith-Jones, Mr. J. E. M. Gunning, Mr. Alban Gordon, Mr. W. W. Grantham, K.C., Mr. H. P. Goodham, Mr. A. W. Goodman, Miss Josémée B. Greenwood, Mr. Graham Grant, Mr. B. B. Gillis, Mr. Anthony Hawke, Mr. George H. Heilbuth, Sir George Humphreys, Mr. Christmas Humphreys, Mr. St. J. Hutchinson, Mr. J. Hutchinson, Mr. P. V. Hunter, Mr. T. A. Harrison, Mr. C. H. Haines, Mr. J. M. Helme, Mr. H. H. Harris, Mr. G. P. Jordan, Mr. R. L. Jackson, Mr. Samuel James, Mr. E. A. Jessel, Mr. P. H. K. King, Mr. George F. Kingham, Mr. C. Weller Kent, K.C., Mr. J. C. Llewellyn, Mr. D. Campbell Lee, Mr. William Latey, Sir Paul Latham, M.P., Mr. Russell Lawrence, Mr. E. M. Ling-Mallison, Mr. S. Lewis Langdon, Mrs. Lloyd Lane, Mr. A. R. Linsley, Mr. Desmond Leggatt, Mr. F. D. Levy, Mr. J. M. Lamont, Mr. A. E. McCloskey, Captain Bertram Mills, Mr. L. M. May, The Rev. F. H. May, Mr. J. B. Montagu (hon. treasurer), Mr. A. Minty, Mr. E. L. Minty, Mr. R. M. Montgomery, K.C., Mr. C. R. Morden, Sir Kenneth Murchison, Mr. G. B. McClure, Mr. O. S. MacCleay, Mr. H. A. K. Morgan, Mr. St. J. McDonald, Mr. Arthur Morley, K.C., Miss G. E. Miles, Mr. Frank Milton, Mr. Cyril Maude, Mr. John Maude, Captain C. F. Maude, Mr. E. Garth Moore, Mr. D. J. S. Nicholson, Mrs. H. Normanton, Miss H. Neville, Miss Irene Oliver, Mr. H. R. Oswald, Mr. Wilfrid Price, Mr. T. J. Philips, Mr. R. A. Powell, Mr. Grafton Pryor, Mr. John Phipps, Mr. F. J. Powell, Mr. J. Platts Mills, Mr. P. L. W. Powell, Mr. Alan Rainer, Miss Rita Reuben, Mr. G. D. Roberts, Mr. R. M. H. Rodwell, Miss Alice Raven, Mr. V. Rothschild, Mr. A. E. E. Reade, Mr. T. Rich, Miss Enid Rosser, Mr. E. T. Rhymer, Mr. C. T. Samman, Mr. Archibald Safford, Mr. C. F. Shoolbred, Mr. Montague Shearman, Miss Venetia Stephenson, Mr. A. L. Stevenson, Mr. R. W. Stevens, Mr. R. E. Seaton, Mr. Harry Samuels, Mr. W. Hornby Steer, Mr. J. Avory Tickell (deputy clerk of the court), Mr. J. G. Trapnell, K.C., Mr. C. G. Tompson, Mr. Maxwell Turner, Mr. J. Wells Thatcher, Mr. J. F. Valetta, Mr. L. A. Vine, Mr. Russell Vick, Mr. R. W. Vick, Mr. Derek Whiteley, Mr. W. H. Webbs, Mr. E. Jones Williams, Mr. H. D. A. Watney, Col. W. J. Waldron, Mr. Joseph Yahuda, Dr. Ernest Young and Mr. Albert Crew (secretary).

Solicitors' Managing Clerks' Association.

RESTRICTIVE COVENANTS.

This association held the first of its season's lecture-meetings in the Old Hall, Lincoln's Inn, on the 6th October, with Mr. Justice Crossman in the chair. Mr. W. C. Cleveland-Stevens read a compact and informative paper on restrictive covenants entered into on the sale of fee simple estates. He used the term "restrictive covenant," he explained, in its limited sense of an obligation, contractual in its origin, which restricted a party in the free use of his freehold; an equitable interest imposing a burden on one piece of land for the benefit of another, and so analogous to an easement. The law had been developed in the courts of equity during the last 100 years, and had not yet been fully worked out. Owing to economic and social changes brought about largely by the war, and to the vast building development now in progress throughout the country, the subject was one of increasing importance. A substantial restrictive covenant in land subject to a contract of sale constituted such a defect of title as to justify the purchaser in refusing to perform, and no solicitor would be in a position to advise usefully on a sale or purchase unless he was aware of the difficulties which the existence of a restrictive covenant might cause to his client. On the other hand, he might help a client to get land at a low price by accepting a restrictive covenant and then establishing that it was obsolete, or to obtain a good price for releasing land from a covenant which was actually no longer enforceable.

The normal method of enforcement was by injunction, and only when assigns were concerned did the rules formulated by courts of equity come into play (*Tulk* v. *Moxhay* (1848) 2 Ph. 774). If a restrictive covenant were enforceable where there was no privity of contract, it must create an equitable interest in the land, the burden and benefit of which were capable of passing to a person acquiring an interest in the land. To create an equitable interest the covenant must affect the mode of use of the land to be burdened and the nature, quality or value of the land to be benefited. If a covenant entered into by the owner of an estate was capable of running with the land, it would be binding on each successive owner, unless he were a *bona fide* purchaser for value of the legal estate without notice, or claimed through such a purchaser. The notice might be actual or constructive. If the mode of imposing a restriction were such that no normal enquiry would bring it to light, such a purchaser would not be affected. A covenantee could not enforce a restrictive covenant against a party claiming title under him even though he retained in his own hands some part of the land to which the covenant related, unless he took a fresh covenant which was plainly not a mere covenant of indemnity (*King* v. *Dickeson*, 40 Ch. 596).

A restrictive covenant (continued Mr. Cleveland-Stevens), was always enforceable between the original parties and their personal representatives; the difficulty arose when someone claiming to have succeeded to the benefit sought to enforce the covenant. If the covenantee parted with all his land, the covenant was purely personal—in gross—and could not be

enforced either by the covenantee or his representatives or assigns against an assign of the covenantor, notwithstanding that the covenant was placarded up all over the land and stamped on every one of the title deeds (*Formby* v. *Barker* [1903] 2 Ch. 539, C.A.; *L.C.C.* v. *Allen* [1914] 3 K.B. 642, C.A.). If, however, the covenant was given to an owner who retained land capable of being benefited by it, then an assign of that owner seeking to enforce the covenant must establish his right in one of two ways. One way was to prove that the benefit of the covenant was, as a matter of construction, annexed to his land. If he could not establish this, he must prove either that the covenant was entered into for the benefit of land capable of being benefited by it, and that the land was capable of being ascertained with reasonable certainty; and also that the benefit of the covenant had been assigned to him on the sale—i.e. that it was part of the subject-matter of his purchase—or else had been assigned to him subsequently as a result of another bargain (*Union of London* v. *Smiths Bank* [1933] Ch. 611, C.A.). Mr. Cleveland-Stevens quoted a number of cases illustrating the annexation of a covenant to land, and the assignability of the benefit where it has not been annexed to the quasi-dominant tenement.

BUILDING SCHEMES.

The phrase "building scheme," explained the lecturer, meant that a piece of land had been put on the market in lots subject to restrictions—type or value of buildings, or user—in such a manner that the owner for the time being of each lot was, as between himself and the owner for the time being of each of the other lots, entitled to enforce and bound to observe these restrictions. A building scheme necessarily involved a community of interest carrying with it a reciprocity of obligation, and certainty and definiteness were essential. Each party must be put in a position to know his rights and liabilities (*Kelly* v. *Barret* [1924] 2 Ch., at p. 406). To enforce the observations of a restrictive covenant in a building scheme (*Ellison* v. *Reacher* [1908] 2 Ch. 374; 665 C.A.), the plaintiff must prove that he and the defendant derived title under a common vendor. He must also prove that before selling the lands to which the plaintiff and defendant were respectively entitled, the common vendor laid out the estate or a defined portion, including the parties' lands, for sale in lots, subject to restrictions intended to be imposed on all the lots, which restrictions, although varying in details, were consistent only with some general scheme of development. He must also prove that these restrictions were for the benefit of all the lots; and that the plaintiff and defendant purchased their lots from the common vendor upon the footing that the restrictions were to enure for the benefit of the other lots included in the scheme, whether or not they were to enure for the benefit of other lands retained by the vendor. When a petitioner was bound by a local law established by the scheme, the fact that his covenant did not conform to the scheme was immaterial. It was not necessary that the conditions should be the same all over the estate.

Gray's Inn Debating Society.

The first meeting of the Michaelmas Term will be held in Gray's Inn Common Room, at 8.30 p.m., on Friday, 9th November, when a joint debate with the Christ Church Law Society will take place, the motion being: "That contests in sports and games between representatives of different nations do more harm than good." This motion will be proposed by Mr. John Wood, and opposed by Sir John Prichard-Jones, Bart. (C.C.L.S.); Mr. H. Olaf Meeres (C.C.L.S.) will speak third, and Mr. Eric Walker will speak fourth.

United Law Society.

A meeting of the United Law Society was held on the 29th October, in the Middle Temple Common Room. Mr. R. Isdell Carpenter proposed: "That *Hardy & Lane Limited* v. *Chilton* [1928] 2 K.B. 306, is better law than *Rex* v. *Denyer* [1926] 2 K.B. 258." Mr. O. T. Hill opposed. Messrs. N. G. C. Pearson, J. H. Menzies, R. W. Bell, and H. S. Wood-Smith spoke, and Mr. Isdell Carpenter replied. The motion was lost by one vote.

Rules and Orders.

THE CHILDREN AND YOUNG PERSONS (AUTHORISED PERSONS) GENERAL ORDER (No. 3), 1934, DATED OCTOBER 1, 1934, MADE BY THE SECRETARY OF STATE UNDER SECTION 62 OF THE CHILDREN AND YOUNG PERSONS ACT, 1933 (23 & 24 GEO. 5, C. 12).

I, the Right Honourable Sir John Gilmour, Baronet, one of His Majesty's Principal Secretaries of State, in virtue of the power conferred on me by Section 62 (4) of the Children and Young Persons Act, 1933, hereby authorise the Birkenhead and Wirral Society for the Prevention of Cruelty to Children to institute proceedings under Section 62 of the said Act.

This Order may be cited as the Children and Young Persons (Authorised Persons) General Order (No. 3), 1934.

John Gilmour,
One of His Majesty's Principal Secretaries of State.

Whitehall,
1st October, 1934.

Parliamentary News.

Progress of Bills.

House of Lords.

Matrimonial Causes (Amended Procedure) Bill.
Read First Time. [30th October.

House of Commons.

Incitement to Disaffection Bill.
Amendments considered. [31st October.
Expiring Laws Continuance Bill.
Read Second Time. [30th October.
Poor Law Bill.
Read First Time. [31st October.

House of Lords.

JUDICIAL VACANCIES.

The LORD CHANCELLOR (Viscount Sankey) moved, That an humble Address be presented to His Majesty representing that the state of business in the King's Bench Division requires that two vacancies in the number of Puisne Judges of the King's Bench Division should be filled, and praying that His Majesty will be graciously pleased to fill such vacancies accordingly, in pursuance of the Supreme Court of Judicature (Consolidation) Act, 1925.

On Question, Motion agreed to, and the said Address ordered to be presented to His Majesty by the Lords with White Staves. [31st October.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. R. K. CHAPPELL, K.C., shall be appointed additional Judge of the High Court of Justice of the Isle of Man, to be styled the "Judge of Appeal," in the place of Sir Harold Derbyshire, K.C., who has resigned on his appointment as Chief Justice of Bengal. Mr. Chappell was called to the Bar by the Inner Temple in 1909. He took silk in 1929.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. WILLIAM GORMAN, K.C., shall be appointed Recorder of Wigan, to succeed Sir Reginald Mitchell Banks, K.C., who has been appointed a county court judge. Mr. Gorman was called to the Bar by the Middle Temple in 1921, and took silk in 1932.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to appoint Mr. ROBERT MACGREGOR MITCHELL, K.C., to be a member of the Scottish Land Court and Chairman of the Court in the room of Lord St. Vigeans, resigned.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to make the following appointments, with effect as from 1st November:—

Mr. JOHN GEORGE BURNS, Advocate, Sheriff Substitute of Ross, Cromarty and Sutherland at Stornoway, to be Sheriff Substitute of Stirling, Dumbarton and Clackmannan at Dumbarton, in place of Mr. A. J. P. MENZIES, O.B.E., Advocate, resigned.

Mr. ROBERT MACINNES, Advocate, to be Sheriff Substitute of Ross, Cromarty and Sutherland at Stornoway.

The Lord Chancellor has appointed Mr. CECIL HAMMOND COX to be the Registrar of Birmingham County Court jointly

with Mr. Frank Glanvil Glanfield, and to be joint District Registrar in the District Registry of the High Court of Justice in Birmingham as from the 29th October, 1934. Mr. Cox was admitted a solicitor in 1920.

The Lord Chancellor has appointed Mr. RICHARD WEDD to be the Registrar of Coventry County Court and District Registrar in the District Registry of the High Court of Justice in Coventry as from the 29th October, 1934.

The Lord Chancellor has appointed Mr. ARTHUR MUNKHOUSE WILSON to be the Registrar of Shaftesbury County Court as from the 22nd October, 1934. Mr. Wilson was admitted a solicitor in 1905.

The Secretary of State for Scotland, after consultation with the Lord President of the Court of Session, has appointed as from 9th October Mr. JOHN MITCHELL, Depute Clerk, to be Deputy Principal Clerk in the General Department of the Court of Session in place of Mr. Joseph Antonio, deceased, and Mr. JOHN MACKENZIE, Assistant Clerk, to be Depute Clerk of Session in place of Mr. Mitchell.

Mr. E. C. SEARE, Deputy Town Clerk of Deptford, has been appointed Town Clerk as from 1st April, 1935.

INAUDIBILITY IN COURT:

A REPORTER'S COMPLAINT.

A correspondent in *The Times*, who signs himself "Sub silentio," complains in the course of a letter published in that journal last Wednesday of the difficulty experienced in hearing clearly the words of some of the learned judges in the Law Courts. He observes the frequency with which witnesses are told to turn towards the judge or jury and speak up, and admits that the acoustic properties of certain of the courts are not good. The delivery of a written judgment, of course, enables the parties to examine the decision later at leisure. "But," the writer says, "this is by no means the usual position, and those engaged in the already arduous work of reporting proceedings find their work unnecessarily heavy by the failure of some of the judges to speak loudly and clearly so as to enable their judgments and interlocutory observations to be recorded accurately."

QUIT RENT SERVICES—INTERESTING SURVIVALS.

The King's Remembrancer, Sir George Bonner, acknowledged the rendering of Quit Rent Services to the Crown by the Corporation of the City of London at the Law Courts recently in respect of a piece of waste ground in Shropshire called The Moors, and of a tenement called The Forge in the Parish of St. Clement Danes, W.C. The City Solicitor, Mr. A. F. I. Pickford, produced for The Moors a new hatchet and billhook with which he cut faggots, and for The Forge counted out six horseshoes and sixty-one nails which, it is understood, have been used for the ceremony for six centuries.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part I.	MR. JUSTICE BENNETT. Witness. Part II.
	GROUP I.		GROUP II.	
	Mr.	Mr.	Mr.	Mr.
Nov. 5	Hicks Beach	Ritchie	*Blaker	*Hicks Beach
„ 6	Andrews	Blaker	*Jones	Blaker
„ 7	Jones	More	*Hicks Beach	*Jones
„ 8	Ritchie	Hicks Beach	Blaker	Hicks Beach
„ 9	Blaker	Andrews	*Jones	*Blaker
„ 10	More	Jones	Hicks Beach	Jones
	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE CLAUSON. Non-Witness.	MR. JUSTICE LUXMOORE. Witness. Part II.	MR. JUSTICE FARWELL. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Nov. 5	Jones	More	Ritchie	*Andrews
„ 6	Hicks Beach	Ritchie	*Andrews	*More
„ 7	Blaker	Andrews	More	*Ritchie
„ 8	Jones	More	*Ritchie	*Andrews
„ 9	Hicks Beach	Ritchie	Andrews	More
„ 10	Blaker	Andrews	More	Ritchie

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th November, 1934.

	Div. Months.	Middle Price 31 Oct. 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	115¼	3 9 5	3 0 9
Consols 2½%	JAJO	82¾	3 0 5	—
War Loan 3½% 1952 or after	JD	105½xd	3 6 6	3 2 4
Funding 4% Loan 1960-90	MN	116¼	3 8 10	3 1 2
Funding 3% Loan 1959-69	AO	100	3 0 0	3 0 0
Victory 4% Loan Av. life 29 years	MS	114¼	3 10 0	3 4 9
Conversion 5% Loan 1944-64	MN	119¾	4 3 6	2 10 6
Conversion 4½% Loan 1940-44	JJ	113⅞	3 19 4	2 1 2
Conversion 3½% Loan 1961 or after	AO	106¼	3 5 10	3 2 11
Conversion 3% Loan 1948-53	MS	103¾	2 17 10	2 13 4
Conversion 2½% Loan 1944-49	AO	99¾	2 10 1	2 10 5
Local Loans 3% Stock 1912 or after	JAJO	95½	3 2 10	—
Bank Stock	AO	369½	3 4 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87	3 3 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	95	3 3 2	—
India 4½% 1950-55	MN	111½xd	4 0 9	3 10 11
India 3½% 1931 or after	JAJO	96½	3 12 6	—
India 3% 1948 or after	JAJO	85	3 10 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	117	3 16 11	3 10 3
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	3 3 10
Tanganyika 4% Guaranteed 1951-71	FA	112	3 11 5	3 0 9
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102	2 18 10	2 16 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	112	4 0 4	2 12 2
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	108	3 14 1	3 9 2
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	105	3 11 5	3 6 0
Canada 4% 1953-58	MS	111	3 12 1	3 4 4
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	99	3 0 7	3 2 7
Nigeria 4% 1963	AO	111	3 12 1	3 8 0
Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 4
South Africa 3½% 1953-73	JD	107	3 5 5	3 0 2
*Victoria 3½% 1929-49	AO	101	3 9 4	—
*W. Australia 3½% 1935-55	AO	101	3 9 4	1 9 4
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	93	3 4 6	—
Croydon 3% 1940-60	AO	98	3 1 3	3 2 4
Essex County 3½% 1952-72	JD	106	3 6 0	3 1 3
*Hull 3½% 1925-55	FA	102	3 8 8	—
Leeds 3% 1927 or after	JJ	93	3 4 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	104	3 7 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3 1 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after	FA	94	3 3 10	—
Metropolitan Consd. 2½% 1920-49	MJSD	98	2 11 0	2 13 4
Metropolitan Water Board 3% "A" 1963-2003	AO	95	3 3 2	3 3 7
Do. do. 3% "B" 1934-2003	MS	96	3 2 6	3 3 0
Do. do. 3% "E" 1953-73	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	111	3 12 1	3 3 9
Do. do. 4½% 1950-70	MN	114	3 18 11	3 7 1
Nottingham 3% Irredeemable	MN	94	3 3 10	—
Sheffield Corp. 3½% 1968	JJ	105	3 6 8	3 5 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	110¼	3 12 5	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	130	3 16 11	—
Gt. Western Rly. 5% Rent Charge	FA	129½	3 17 3	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126	3 19 4	—
Gt. Western Rly. 5% Preference	MA	112	4 9 3	—
Southern Rly. 4% Debenture	JJ	109½	3 13 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	109½	3 13 1	3 9 4
Southern Rly. 5% Guaranteed	MA	126	3 19 4	—
Southern Rly. 5% Preference	MA	111½	4 9 8	—

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